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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,575	02/01/2002	Lionel L. Brightwell	24683	9683

28624 7590 05/11/2004

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EXAMINER

KATCHEVES, BASIL S

ART UNIT PAPER NUMBER

3635

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/061,575

Applicant(s)

BRIGHTWELL ET AL.

Examiner

Basil Katcheves

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

Claims 1-9, 11-13, 16-21, 24-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,748,780 to Vinther as in the previous office action.

Regarding claims 1, 16, 18, 20, 24 and 26, Vinther discloses a wood board (column 1, lines 29-30) having a protective end cap (fig. 9b: 12j) wherein the sides of the cap taper (fig. 9b: 17j) as they extend from the spin of the cap. Vinther also discloses the use of a taper edged, solid, one piece cap (fig. 10b: 41).

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,169,201 to Gower as in the previous office action.

***Claim Rejections - 35 USC § 103***

Claims 10 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,748,780 to Vinther as in the previous office action.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,748,780 to Vinther in view of U.S. Patent No. Des. 405,194 to Kenkel as in the previous office action.

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Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,748,780 to Vinther in view of U.S. Patent No. 5,605,238 to Jacobs as in the previous office action.

### ***Response to Arguments***

Applicant's arguments filed 3/8/04 have been fully considered but they are not persuasive. Applicant argues that the prior art, Vinther, does not teach or disclose a "single piece, c-shaped" cap. However, fig. 6b teaches a c shaped cap made of a single piece and figs. 4a & 4b are clearly C shaped, but not single pieces. Applicant argues that the prior art is drawn to non analogous art. Applicant is claiming a wood plank with an end cap and the prior art is drawn to a panel end cap meeting the same limitations as claimed in the instant application. Applicant argues that the instant application is intended for protecting plank edges from impact damage while the prior art is directed to protecting edges from harmful moisture. However, the basic goal in both is the same. It is to protect the panel from damage and because the prior art meets the basic claim structure of the instant application, the prior art may also protect the edges from impact damage. Applicant argues that claim 22 is rejected by non analogous art (Gower). However, claim 22 is claiming only an end cap. Gower teaches an end cap. Therefore, they are analogous. The applicant should note that the functional language used in this claim does not positively claim a wood plank. Applicant's argument regarding the remaining issues are moot under new grounds of rejections.

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**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

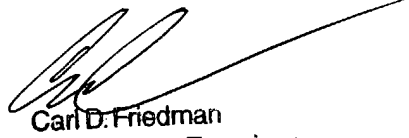
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK 

5/3/04

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600